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Attorneys for Defendants Maryland Square Shopping Center, LLC,
the Herman Kishner Trust dba Maryland Square Shopping Center,
Irwin Kishner, Jerry Engel, Bank of America, as Trustees for
The Herman Kishner Trust, and Maryland Square, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STATE OF NEVADA, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, DIVISION OF
ENVIRONMENTAL PROTECTION, BUREAU
OF CORRECTIVE ACTIONS,

Plaintiffs,

vs.

MARYLAND SQUARE SHOPPING CENTER,
LLC, a Nevada limited liability company and
IRWIN KISHNER, JERRY ENGEL and BANK
OF AMERICA N.A., as co-trustees of the
HERMAN KISHNER TRUST, MARYLAND
SQUARE, LLC, a Nevada limited liability
company, MELVIN SHAPIRO and PHILIP
SHAPIRO, individually and doing business
individually and/or as a general partner of "AL
PHILLIPS THE CLEANER" or "AL PHILLIPS
THE CLEANER, INC.," estate of PHILIP
SHAPIRO, deceased, SHAPIRO BROS.

Case No.: 3:09-cv-231

**MARYLAND SQUARE SHOPPING
CENTER, LLC, THE HERMAN KISHNER
TRUST DBA MARYLAND SQUARE
SHOPPING CENTER, IRWIN KISHNER,
JERRY ENGEL, BANK OF AMERICA, AS
TRUSTEES FOR THE HERMAN
KISHNER TRUST, AND MARYLAND
SQUARE, LLC'S ANSWER TO
COMPLAINT**

1 INVESTMENT CORPORATION, a dissolved
2 Nevada corporation, AL PHILLIPS THE
3 CLEANERS, INC., a dissolved corporation
(Corporation no. 745-1965), AL PHILLIPS THE
4 CLEANERS, INC., a dissolved corporation
(Corporation no. 11-71),

Defendants.

5
6 Maryland Square Shopping Center, LLC, The Herman Kishner Trust dba Maryland
7 Square Shopping Center, Irwin Kishner, Jerry Engel, Bank Of America, as Trustees for the
8 Herman Kishner Trust, and Maryland Square, LLC's Defendant, by and through their attorneys
9 of record, the law firm of Marquis & Aurbach and the law firm of Dongell Lawrence Finney
10 LLP, hereby answer and allege as follows:

11 **GENERAL ALLEGATIONS**

12 1. In answering Paragraph 1 of Plaintiff's Complaint, these answering Defendants
13 admit the allegations contained therein.

14 2. In answering Paragraph 2 of Plaintiff's Complaint, these answering Defendants
15 admit the allegations contained therein.

16 3. In answering Paragraph 3 of Plaintiff's Complaint, these answering Defendants
17 admit the allegations contained therein.

18 4. In answering Paragraph 4 of Plaintiff's Complaint, these answering Defendants
19 admit the allegations contained therein.

20 5. In answering Paragraph 5 of Plaintiff's Complaint, these answering Defendants
21 are without sufficient information to form an opinion as to the truth of the allegations contained
22 therein and, therefore, deny the same.

23 6. In answering Paragraph 6 of Plaintiff's Complaint, these answering Defendants
24 are without sufficient information to form an opinion as to the truth of the allegations contained
25 therein and, therefore, deny the same.

26 7. In answering Paragraph 7 of Plaintiff's Complaint, these answering Defendants
27 admit the allegations contained therein.

28 . . .

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1 8. In answering Paragraph 8 of Plaintiff's Complaint, these answering Defendants
2 admit the allegations contained therein.

3 9. In answering Paragraph 9 of Plaintiff's Complaint, these answering Defendants
4 admit the allegations contained therein.

5 10. In answering Paragraph 10 of Plaintiff's Complaint, these answering Defendants
6 are without sufficient information to form an opinion as to the truth of the allegations contained
7 therein and, therefore, deny the same.

8 11. In answering Paragraph 11 of Plaintiff's Complaint, these answering Defendants
9 are without sufficient information to form an opinion as to the truth of the allegations contained
10 therein and, therefore, deny the same.

11 12. In answering Paragraph 12 of Plaintiff's Complaint, these answering Defendants
12 are without sufficient information to form an opinion as to the truth of the allegations contained
13 therein and, therefore, deny the same.

14 13. In answering Paragraph 13 of Plaintiff's Complaint, these answering Defendants
15 are without sufficient information to form an opinion as to the truth of the allegations contained
16 therein and, therefore, deny the same.

17 14. In answering Paragraph 14 of Plaintiff's Complaint, these answering Defendants
18 admit the allegations contained therein.

19 15. In answering Paragraph 15 of Plaintiff's Complaint, these answering Defendants
20 admit the allegations contained therein.

21 16. In answering Paragraph 16 of Plaintiff's Complaint, these answering Defendants
22 are without sufficient information to form an opinion as to the truth of the allegations contained
23 therein and, therefore, deny the same.

24 17. In answering Paragraph 17 of Plaintiff's Complaint, these answering Defendants
25 admit the allegations contained therein.

26 18. In answering Paragraph 18 of Plaintiff's Complaint, these answering Defendants
27 are without sufficient information to form an opinion as to the truth of the allegations contained
28 therein and, therefore, deny the same.

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1 19. In answering Paragraph 19 of Plaintiff's Complaint, these answering Defendants
2 are without sufficient information to form an opinion as to the truth of the allegations contained
3 therein and, therefore, deny the same.

4 20. In answering Paragraph 20 of Plaintiff's Complaint, these answering Defendants
5 are without sufficient information to form an opinion as to the truth of the allegations contained
6 therein and, therefore, deny the same.

7 21. In answering Paragraph 21 of Plaintiff's Complaint, these answering Defendants
8 admit the allegations contained therein.

9 22. In answering Paragraph 22 of Plaintiff's Complaint, these answering Defendants
10 are without sufficient information to form an opinion as to the truth of the allegations contained
11 therein and, therefore, deny the same.

12 23. In answering Paragraph 23 of Plaintiff's Complaint, these answering Defendants
13 are without sufficient information to form an opinion as to the truth of the allegations contained
14 therein and, therefore, deny the same.

15 24. In responding to Paragraph 24 of Plaintiff's Complaint, these answering
16 Defendants repeat, reallege, and incorporate the responses to the allegations in paragraphs 1-23
17 of Plaintiff's Complaint as if fully set forth herein.

18 25. In answering Paragraph 25 of Plaintiff's Complaint, these answering Defendants
19 are without sufficient information to form an opinion as to the truth of the allegations contained
20 therein and, therefore, deny the same.

21 26. In answering Paragraph 26 of Plaintiff's Complaint, these answering Defendants
22 are without sufficient information to form an opinion as to the truth of the allegations contained
23 therein and, therefore, deny the same.

24 27. In answering Paragraph 27 of Plaintiff's Complaint, these answering Defendants
25 are without sufficient information to form an opinion as to the truth of the allegations contained
26 therein and, therefore, deny the same.

27 ...

28 ...

28. In answering Paragraph 28 of Plaintiff's Complaint, these answering Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

29. In answering Paragraph 29 of Plaintiff's Complaint, these answering Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

30. In answering Paragraph 30 of Plaintiff's Complaint, these answering Defendants deny the allegations contained therein.

31. In responding to Paragraph 31 of Plaintiff's Complaint, these answering Defendants repeat, reallege, and incorporate the responses to the allegations in paragraphs 1-30 of Plaintiff's Complaint as if fully set forth herein.

32. In answering Paragraph 32 of Plaintiff's Complaint, these answering Defendants deny the allegations contained therein.

33. In responding to Paragraph 33 of Plaintiff's Complaint, these answering Defendants repeat, reallege, and incorporate the responses to the allegations in paragraphs 1-32 of Plaintiff's Complaint as if fully set forth herein.

34. In answering Paragraph 34 of Plaintiff's Complaint, these answering Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

35. In answering Paragraph 35 of Plaintiff's Complaint, these answering Defendants admit the allegations contained therein.

36. In answering Paragraph 36 of Plaintiff's Complaint, these answering Defendants admit the allegations contained therein.

37. In answering Paragraph 37 of Plaintiff's Complaint, these answering Defendants admit the allegations contained therein.

38. In answering Paragraph 38 of Plaintiff's Complaint, these answering Defendants admit the allegations contained therein.

...

39. In answering Paragraph 39 of Plaintiff's Complaint, these answering Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

40. In answering Paragraph 40 of Plaintiff's Complaint, these answering Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

41. In responding to Paragraph 41 of Plaintiff's Complaint, these answering Defendants repeat, reallege, and incorporate the responses to the allegations in paragraphs 1-40 of Plaintiff's Complaint as if fully set forth herein.

42. In answering Paragraph 42 of Plaintiff's Complaint, these answering Defendants admit the allegations contained therein.

43. In answering Paragraph 43 of Plaintiff's Complaint, these answering Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

44. In answering Paragraph 44 of Plaintiff's Complaint, these answering Defendants are without sufficient information to form an opinion as to the truth of the allegations contained therein and, therefore, deny the same.

45. In answering Paragraph 45 of Plaintiff's Complaint, these answering Defendants deny the allegations contained therein.

46. In answering Paragraph 46 of Plaintiff's Complaint, these answering Defendants deny the allegations contained therein.

47. In answering Paragraph 47 of Plaintiff's Complaint, these answering Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The alleged presence of a substance under the citizens' properties and any alleged damage resulting therefrom were caused solely by (i) an act of God; (ii) a third party or (iii) any combination of the foregoing.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by any applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to join all indispensable parties as required by Rule 19 of the Federal Rules of Civil Procedure.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has waived any and all of the claims alleged in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from asserting any and all of the claims alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's purported claims for relief against these answering Defendants are barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to state facts sufficient to constitute a cause of action against these answering Defendants.

EIGHTH AFFIRMATIVE DEFENSE

At all times relevant to this action, these answering Defendants acted with due care and in accordance with all then-applicable statutory and regulatory requirements.

NINTH AFFIRMATIVE DEFENSE

These answering Defendants allege that they have satisfied, fulfilled and performed each and every obligation and duty imposed by law to the full extent of its responsibility as a property owner.

TENTH AFFIRMATIVE DEFENSE

These answering Defendants allege that any obligation they owed to Plaintiff has been satisfied, released, or otherwise discharged to present.

ELEVENTH AFFIRMATIVE DEFENSE

These answering Defendants' status as a property owner is not sufficient to impose any liability.

TWELFTH AFFIRMATIVE DEFENSE

These answering Defendants allege and reserve any and all defenses available.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were wholly or partly caused or contributed to by Plaintiff's own actions, conduct and/or omissions.

FOURTEENTH AFFIRMATIVE DEFENSE

Any and all damages were wholly or partly caused by the acts, conduct and/or omissions by third parties over whom these answering Defendants had no control.

FIFTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are not negligent, liable or responsible for any claims or damages.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no damages and/or failed to mitigate its damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

These answering Defendants owe no duties or obligations to the Plaintiff due to its substantial and material breach of its duties and obligations to these answering Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

Any and all liability is several and must be allocated and/or reduced by the liability of other responsible parties pursuant to Burlington Northern & Santa Fe Railway Co. v. United States, No. 07-1601, 556 U.S. ____ (2009).

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff breached their duties and responsibilities to these answering Defendants.

TWENTIETH AFFIRMATIVE DEFENSE

These answering Defendants owe no duty to indemnify the Plaintiff from the claims alleged by the Plaintiff.

These answering Defendants reserve the right to amend these affirmative defenses as discovery unfolds and new information is discovered.

...

WHEREFORE, these answering Defendants pray for judgment as follows:

1. That Plaintiff take nothing by virtue of its Complaint on file herein, that the same be dismissed with prejudice;

2. For an award of reasonable attorney fees and costs of suit incurred in the defense of this action; and

3. For such other and further relief as the Court may deem just and proper

DATED: This 18th day of March, 2010.

Respectfully submitted by:

MARQUIS & AURBACH

By: /s/ Jason M. Gerber

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Attorneys for Defendants
Maryland Square Shopping Center, LLC,
the Herman Kishner Trust dba Maryland Square
Shopping Center, Irwin Kishner, Jerry Engel,
Bank of America, as Trustees for The Herman
Kishner Trust, and Maryland Square, LLC

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**NOTICE OF ELECTRONIC SERVICE
PROOF OF SERVICE**

STATE OF NEVADA, COUNTY OF CLARK

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action; my business address is 10001 Park Run Drive, Las Vegas, NV 89145.

On March 18, 2010, the foregoing documents described as MARYLAND SQUARE SHOPPING CENTER, LLC, THE HERMAN KISHNER TRUST DBA MARYLAND SQUARE SHOPPING CENTER, IRWIN KISHNER, JERRY ENGEL, BANK OF AMERICA, AS TRUSTEES FOR THE HERMAN KISHNER TRUST, AND MARYLAND SQUARE, LLC'S AMENDED ANSWER TO COMPLAINT was served upon the parties in this action as set forth below:

Catherine Cortez Masto, Esq.
William Frey, Esq.
100 N. Carson Street
Carson City, NV 89701
Attorney for Plaintiff

Jeremy Gilman, Esq.
BENESCH FRIEDLANDER COPLAN &
ARONOFF, LLP
200 Public Square, Suite 2300
Cleveland, OH 44114-2378
*Attorney for Defendants MELVIN SHAPIRO,
Individually, and SHAPIRO BROS.
INVESTMENT CO., a dissolved Nevada
corporation*

[X] Electronically in accordance with United States District Court of the District of Nevada Electronic Filing Procedures, Section IV Service, B. Electronic Service.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 18, 2010, at Las Vegas, Nevada. Under penalty of perjury under the laws of the State of Nevada I declare the aforesaid to be true and correct.

Roxanne Minnick
An Employee of Marquis & Aurbach

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